

APR 05 2024

Halifax, N.S.

2024

Hfx No. 532179

**SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY**

IN THE MATTER OF: The Receivership of Atlantic Oriental Wholesale (AOW) Inc.

BETWEEN: Business Development Bank of Canada

Applicant

- and -



Atlantic Oriental Wholesale (AOW) Inc.

Respondent

NOTICE OF APPLICATION IN CHAMBERS

To: See Schedule "A" attached

The applicant requests an order against you

The applicant, the Business Development Bank of Canada (the "**Bank**"), is applying to a judge in chambers for an Order (the "**Receivership Order**");

- (i) Abridging time; and
- (ii) Appointing Deloitte Restructuring Inc. as Receiver of all of the assets, properties and undertaking of the Respondent Atlantic Oriental Wholesale (AOW) Inc. ("**AOW**");

and, if the Receivership Order is granted,

- (iii) An Order (the "**Sale Process Order**") approving the Sale Process as described and defined in the First Report of Deloitte Restructuring Inc. (the "**Receiver**") dated April 1, 2024, and authorizing and directing the Receiver to proceed accordingly.

The Bank started this application by filing this notice on the date certified by the prothonotary.

Grounds for order

The Bank is applying for the Receivership Order and the Sale Process Order on the following grounds:

See Schedule "B" attached

Evidence supporting application

The Bank offers the following affidavits in support of the application for the Receivership Order and the Sale Process Order:

- (a) The Affidavit of Liam Wilson sworn herein on March 6, 2024; and
- (b) The Affidavit of Stephen Kingston sworn herein on April 4, 2024.

The Bank is also relying upon the First Report.

A copy of each affidavit, and the First Report, is to be delivered to you with this notice, and further affidavits and/or Reports may be delivered before the deadlines provided in Civil Procedure Rule 5 - Application.

You may participate

You may file with the court a notice of contest, and any affidavits upon which you rely, no more than 5 days after this notice is delivered to you or you are otherwise notified of the application. Filing the notice of contest entitles you to notice of further steps in the application, including notice of further affidavits.

Time, date, and place

The application is to be heard by the Honourable Justice presiding in chambers at **2:00 pm on April 11, 2024** in the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia.

The Bank has set this Application for Hearing a total of a half hour or less in Chambers. The Bank says the Application will not require more time.

You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.

Possible order against you

The judge may grant a final order on the application without further notice to you if you fail to deliver your notice of contest on time, or if you or your counsel fail to appear in chambers at the above time, date, and place.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the prothonotary 1815 Upper Water Street, Halifax, Nova Scotia (telephone 902-424-4900).

When you file a document, you must immediately deliver a copy of it to the applicant and each other party entitled to notice, unless the document is part of an ex parte motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Bank designates the following address:

Stephen Kingston
McInnes Cooper
1969 Upper Water Street, Suite 1300
McInnes Cooper Tower - Purdy's Wharf
Halifax NS B3J 2V1

Documents delivered to this address are considered received by the applicant.
Further contact information is available from the prothonotary.

Signature

Signed April 5, 2024



Stephen Kingston
Counsel to the Applicant,
The Business Development Bank of Canada

Prothonotary's certificate

I certify that this Notice of Application was filed with the court on April 5, 2024.



Prothonotary

JESSICA BOUTILIER
Prothonotary

Schedule "A"

Atlantic Oriental Wholesale (AOW) Inc.

c/o Jun Tak Kim
5889 English St.
Halifax, NS B3H 1K7
Email: human1961@gmail.com

Royal Bank of Canada

c/o Stewart Robinson, Recognised Agent
1959 Upper Water St.
Suite, 1400
Halifax, NS B3J 3N2
Email: stewart.robinson@rbc.com

De Lage Landen Financial Services Canada Inc.

c/o Charles Reagh, Recognised Agent
Stewart McKelvey
1741 Lower Water St.
Suite 600
Halifax, NS B3J 0J2
Email: creagh@stewartmckelvey.com

CWB National Leasing Inc.

c/o Maurice Chiasson, Recognised Agent
Stewart McKelvey
1741 Lower Water St.
Suite 600
Halifax, NS B3J 0J2
Email: mchiasson@stewartmckelvey.com

The Office of the Superintendent of Bankruptcy Canada

c/o Abdulwahid Nasser, Bankruptcy Assistant
Room 1605, Maritime Centre
1505 Barrington Street
Halifax NS B3J 3K5
Email: abdulwahid.nasser@canada.ca

Canada Revenue Agency

c/o Karen Henderson,
Insolvency Collections Officer,
Nova Scotia Tax Services Office
100-145 Hobson's Laker Drive
Halifax, NS B3S QJ1

Schedule "B"

1. The Applicant (the "Bank") is a body corporate, incorporated pursuant to the laws of Canada.
2. The Respondent ("AOW") is a body corporate, incorporated pursuant to the laws of the Province of Nova Scotia.
3. AOW is indebted to the Bank pursuant to a Letter of Offer issued by the Bank on January 12, 2022 and accepted by AOW on January 13, 2022, as amended by letters dated March 3, 2022, March 29, 2022, April 18, 2022 and January 25, 2023 (collectively, the "Loan Agreement").
4. The Loan Agreement references the credit facilities being extended by the Bank to AOW, and also sets out the Bank's requirements regarding security for those credit facilities.
5. AOW's obligations to the Bank pursuant to the Loan Agreement are secured by:
 - (a) A Mortgage granted by AOW to the Bank and dated March 2, 2022. The Mortgage was recorded at the Land Registration Office for Shelburne County, Nova Scotia on April 26, 2022 as Doc. No. 120485090, and by its terms secures a principal debt of \$1,700,000 against AOW's property at Seal Point Road, Upper Port La Tour, Shelburne County (PID No. 82540097); and
 - (b) A General Security Agreement granted by AOW to the Bank and dated March 2, 2022, a Financing Statement for which was recorded pursuant to the *Personal Property Security Act* as Reg. No. 36126654.
6. AOW's obligations to the Bank were also supported by the personal guarantee of AOW's President, Jun Tak Kim.
7. The outstanding balance owed by AOW to the Bank pursuant to the Loan Agreement totalled **\$1,193,108.69** as of March 4, 2024.
8. AOW has defaulted in its obligations to the Bank pursuant to the Loan Agreement and its account is in arrears.
9. AOW has ceased operations and is no longer carrying on business.
10. AOW is in arrears as regards property taxes on the mortgaged property, which totalled \$20,470.95 as of January 8, 2024.
11. Mr. Kim declared personal bankruptcy on December 22, 2023.

12. On January 2, 2024 the Bank made demand for payment upon AOW and issued a Notice of Intention to Enforce Security ("NITES"). AOW did not respond to the demand letter and NITES, and the Bank has not received payment.
13. On January 17, 2024 the Bank appointed Deloitte Restructuring Inc. ("Deloitte") as the "private" receiver and manager for AOW, pursuant to the powers contained security granted by AOW to the Bank.
14. The Bank considers that a Court-appointed Receiver is necessary and desirable in this instance as AOW has defaulted in its obligations to the Bank, has ceased operations and no longer carries on business, and as the Bank's security includes a mortgage over commercial real estate.
15. The Bank believes that the Court appointment of a Receiver would enable the Receiver to formulate and implement a process for the orderly sale of AOW's assets, in a transparent manner, and subject to the supervision of this Honourable Court.
16. The Bank therefore seeks an Order (the "Receivership Order") appointing Deloitte Restructuring Inc. as Receiver of all of the assets, property and undertaking of AOW pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.N.S. 1985, c. B-3 as am. (the "BIA") and s. 43(9) of the *Judicature Act*, s. R.S.N.S. 1989, c. 240, together with such further and other relief as this Honourable Court deems just.
17. Deloitte has consented to act as Receiver, if so appointed by this Honourable Court.
18. In the event that the Receivership Order is granted, the Bank is seeking an Order (the "Sale Process Order") approving the Sale Process as described and defined in Deloitte's First Report dated April 1, 2024, and authorizing and directing Deloitte to proceed accordingly.

References

The Bank shall rely upon the following legislation, rules or points of law in respect of the Application:

- (i) Rule 6 of the *Bankruptcy and Insolvency General Rules*, C.C.R. 1978, c. 368;
- (ii) BIA s. 243;
- (iii) Section 43(9) the *Judicature Act*; and
- (iv) The criteria used by this Honourable Court to assess the merits of Applications made by secured creditors seeking the Court appointment of Receivers and approval of proposed sale processes by Receivers.